

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	MB Docket No. 14-82
)	
PATRICK SULLIVAN)	FRN 0003749041, 0006119796,
(Assignor))	0006149843, 0017196064
)	
and)	Facility ID No. 146162
)	
LAKE BROADCASTING, INC.)	File No. BALFT-20120523ABY
(Assignee))	
)	
Application for Consent to Assignment of)	
License of FM Translator Station W238CE,)	
Montgomery, Alabama)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

ENFORCEMENT BUREAU'S OPPOSITION TO LAKE'S MOTION TO STRIKE

Background

1. On December 2, 2016, the Presiding Judge granted the Enforcement Bureau (Bureau) an extension until December 15 to produce the documents that Lake Broadcasting, Inc. (Lake) had requested concerning the qualifications of one of the Bureau's witnesses, Ms. Tammy Gremminger, a parole and probation officer with the Missouri Department of Corrections.¹ In that *Order*, the Presiding Judge suggested that if the Bureau were still unable to make contact with Ms. Gremminger by the December 15 deadline, he would hold a status conference to determine the next course of action.²

¹ See *Order*, FCC 16M-34 (ALJ, rel. Dec. 2, 2016).

² See *id.* at 2.

2. On December 8, 2016, the Bureau learned that Ms. Gremminger had been instructed by legal counsel for the Missouri Department of Corrections not to contact the Bureau as the result of an internal investigation. The Bureau promptly informed the Presiding Judge that it was still unable to make contact with Ms. Gremminger and would not be able to meet the December 15 production deadline.³ The Bureau also provided the limited information it had as to the reason why Ms. Gremminger was instructed not to have contact with the Bureau.⁴ Specifically, the Bureau advised the Presiding Judge that it learned from Ms. Gremminger's colleague that someone apparently claiming to represent Mr. Rice had threatened Ms. Gremminger with legal action if she continued cooperating with the Bureau and that Ms. Gremminger had referred the issue to the legal office for the Missouri Department of Corrections.⁵

3. In view of the approaching holidays, the Bureau respectfully requested a limited stay of the procedural deadlines in order for the Bureau to have the time to obtain additional information concerning the Missouri Department of Corrections' investigation and whether – and when – Ms. Gremminger will be able to continue working with the Bureau concerning the instant case.⁶ Lake not only opposed the Bureau's request for a stay but also moved to strike the Bureau's pleading.⁷ For the reasons set forth below, the Chief, Enforcement Bureau, through his attorneys, opposes Lake's Motion to Strike.

³ See Enforcement Bureau's Submission Concerning Expert Witness Documentation, filed Dec. 12, 2016.

⁴ See *id.*

⁵ See *id.* Ms. Gremminger's colleague is a state prosecutor who has worked with Ms. Gremminger for more than twenty years.

⁶ See *id.*

⁷ See Lake Broadcasting, Inc.'s Motion to Strike Enforcement Bureau's Motion Concerning Expert Witness Documentation, With Leave to Refile, or Opposition to Motion for Stay, filed Dec. 13, 2016 (Motion to Strike).

Argument

4. In its Motion, Lake fails to offer any basis for the Presiding Judge to strike the Bureau's pleading. Although Lake asserts that the Bureau should be ordered to refile its pleading "in legally acceptable form," Lake does not identify anything about the form of the Bureau's pleading that is improper and/or does not comply with the Commission's rules.⁸ Instead, Lake uses its Motion to Strike as an opportunity to challenge (yet, again) Ms. Gremminger's credibility and the existence of the documents concerning her expert qualifications.⁹ Indeed, Lake even appears to go so far as to suggest – without any evidentiary support – that Ms. Gremminger fabricated the existence of an internal investigation at the Missouri Department of Corrections and the allegations of witness intimidation.¹⁰

5. The Bureau is doing everything it can to find out additional details concerning the Missouri Department of Corrections' investigation – and the alleged witness tampering – including serving a formal request for information from the Bureau's Acting Deputy Chief.¹¹ However, as the Bureau noted in its original pleading, with the holidays fast approaching, it may take some time for the Missouri Department of Corrections to respond to the Bureau's inquiries. Despite Lake's insinuations to the contrary, the Bureau has been completely forthcoming with the Presiding Judge and, respectfully, should be allowed some leeway to investigate this matter. To proceed without Ms. Gremminger's testimony would not only prejudice the Bureau's case,

⁸ See Motion at 1-2.

⁹ See, e.g., Motion at 2-3. In its Opposition to the Bureau's request for an extension of the November 30, 2016 deadline to produce Ms. Gremminger's expert documentation, Lake referred to Ms. Gremminger as "a sham expert witness" and suggested that her description of her expertise during her September 2016 deposition – taken under oath – was "inflated and inaccurate." See Lake Broadcasting, Inc.'s Opposition to Enforcement Bureau's Request For Extension of Time to Provide Expert's Documentation and Motion to Disqualify Expert, filed Nov. 30, 2016, at 2, 4. Lake also suggested that the fact that Ms. Gremminger's qualification documents were supposed to be produced by November 30, 2016 – but were not – calls into question their very existence. See *id.* at 3.

¹⁰ See, e.g., Motion at 3.

¹¹ See Letter from Keith Morgan, Acting Deputy Bureau Chief, Enforcement Bureau to Julie Kempker, Chief State Supervisor, Missouri Department of Corrections and Jay Boresi, Legal Counsel, Missouri Department of Corrections, dated December 15, 2016, attached hereto as Exhibit A.

but would be a great disservice to the Presiding Judge and his staff as they consider the issues presented in this case.

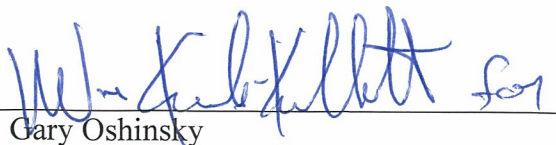
6. In an effort to address Lake's concerns about an open-ended stay of the procedural deadlines, the Bureau proposes that the Presiding Judge schedule a status conference during the week of January 16, 2017 to determine the next course of action. The Bureau is hopeful that, by then, it will be able to provide additional information from the Missouri Department of Corrections. In addition, the Bureau suggests that, before that status conference, the Presiding Judge require Lake to provide an affidavit from Mr. Rice that neither he nor anyone else at his direction or on his behalf contacted Ms. Gremminger or the Missouri Department of Corrections in an effort to threaten her continued involvement in this case. The Bureau is surprised that Lake did not include such an affidavit as an exhibit to its Motion to Strike.

Conclusion

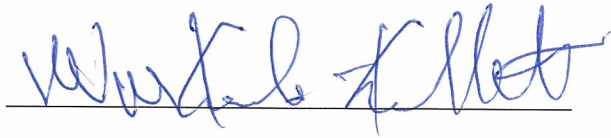
7. For the reasons articulated above, Lake's Motion to Strike should be denied.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau



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December 19, 2016

Exhibit A



FEDERAL COMMUNICATIONS COMMISSION

Enforcement Bureau
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December 15, 2016

Via U.S. Mail and email to julie.kempker@doc.mo.gov and jay.boresi@doc.mo.gov

Julie Kempker
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Jay Boresi, Esquire
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Re: Formal Request for Assistance
Michael S. Rice Inmate No. 510054

Dear Ms. Kempker and Mr. Boresi:

I am writing on behalf of the Enforcement Bureau of the Federal Communications Commission (FCC) to formally request assistance from your office in an ongoing FCC proceeding involving Michael S. Rice, Inmate No. 510054. (See attached Hearing Designation Order.)

Mr. Rice was convicted and incarcerated in Missouri during the late 1990s for molesting 5 children. At that time, Mr. Rice held several FCC broadcast licenses. After his conviction, the FCC revoked his authorization to hold these licenses. He has since applied for a new FCC broadcast license and we are conducting an administrative hearing primarily directed to the issue of his qualifications to hold such a license.

According to documents we received from the Missouri Department of Corrections, Mr. Rice used his position as a radio station owner and operator to gain access to, and attract, minor children. The documents indicate he promised the children opportunities to work as DJ's in return for sexual favors and used the radio station premises to detain at least one child until he was able to molest him. These facts cause us serious concern as we consider his request for a new broadcast license; and we believe it is important to present this information to the Administrative Law Judge in our proceeding. Additionally, our precedent indicates that we should look to the sex offender's risk assessment from local law enforcement for guidance on the risk a sex offender poses to his or her community. See, e.g., *David Titus*, EB Dkt. No. 07-13, 29 FCC Rcd 14066, 14072-73 (2014).

In light of the above, we asked for, and have been receiving, very valuable informal assistance from Ms. Tammy Gremminger, a Probation and Parole officer, who was referred to us by Missouri law enforcement. For the last several months, Ms. Gremminger has been consulting with us concerning Mr. Rice and the records related to his criminal conviction, incarceration and parole.

In September 2016, Ms. Gremminger testified at a deposition held in St. Charles, Mo. in our proceeding. However, in late November, we lost contact with her. We understand that your legal department may be reviewing her continued participation in the FCC proceeding and that she is apparently under instructions not to communicate with Enforcement Bureau counsel until this review has been completed.

We are at the end of the discovery period in our administrative hearing process and are preparing for a trial which is currently scheduled to begin March 6, 2017. As part of that process, we are required to exchange with the other side the written direct testimony of the Enforcement Bureau's witnesses by February 3, 2017 as well as our direct case exhibits. In view of the fact that Ms. Gremminger has apparently been instructed not to communicate with Enforcement Bureau counsel, we are obviously concerned about our ability to meet those deadlines and have requested that our Administrative Law Judge stay the current pre-trial schedule.

At a minimum, we would like to be in a position to provide our Administrative Law Judge with confirmation that your legal department is in fact reviewing Ms. Gremminger's continued participation in the FCC proceeding and the expected amount of time it may take for that review to be completed. In addition, to the extent possible, we would like to be able to explain the reasons why any such review is being conducted and whether – and when – Ms. Gremminger will be able to continue working with the Enforcement Bureau.

We therefore request any assistance you can provide in obtaining this information or in connecting us with the appropriate people at the Missouri Department of Corrections who can provide this information as promptly as possible.

Toward that end, counsel for the Enforcement Bureau in this proceeding will be happy to provide you with any further information you require. The Enforcement Bureau counsel assigned to this case are:

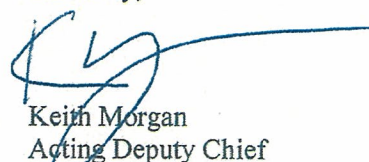
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Thank you in advance for your consideration of this request.

Sincerely,



Keith Morgan
Acting Deputy Chief
Enforcement Bureau
Federal Communications Commission

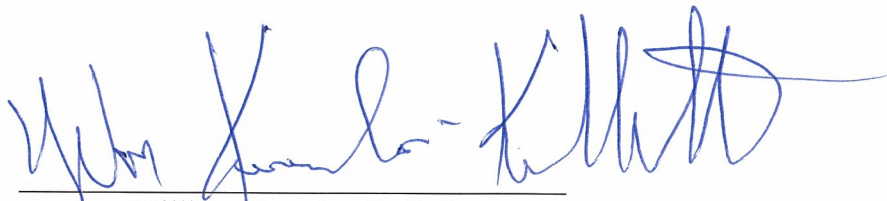
CERTIFICATE OF SERVICE

William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certifies that he has on this 19th day of December, 2016, sent by first class United States mail and by email copies of the foregoing ENFORCEMENT BUREAU'S OPPOSITION TO LAKE'S MOTION TO STRIKE to:

Jerold L. Jacobs, Esq.
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Washington, DC 20006
jerold.jacobs.esq@verizon.net
Counsel for Patrick Sullivan and Lake Broadcasting, Inc.

And caused a copy of the foregoing to be served via hand-delivery to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, DC 20554



William Knowles-Kellett